
**APPEALS BOARD
UTAH LABOR COMMISSION**

GARY B. SELF,

Petitioner,

vs.

**MINERAL RESOURCES
INTERNATIONAL and CLARENDON
NATIONAL INSURANCE CO,**

Respondents.

**ORDER REVERSING
ALJ'S DECISION**

ORDER OF REMAND

Case No. 05-0533

Gary B. Self asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge George's dismissal of Mr. Self's claim for benefits under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12, §34A-2-801(3) and §34A-3-102.

BACKGROUND AND ISSUE PRESENTED

On June 7, 2005, Mr. Self filed an Application For Hearing with the Labor Commission, claiming occupational disease benefits for medical conditions allegedly caused by exposure to dust and chemicals while working for Mineral Resources International. Mr. Self's claim was assigned to Judge George for adjudication.

On June 17, 2005, Mineral Resources International and its insurance carrier, Clarendon National Insurance (referred to jointly as "Mineral Resources" hereafter), sent a letter to Mr. Self at his home in Oklahoma instructing him to report for examination by the company's medical consultant in Salt Lake City, Utah, on July 7, 2005. Mineral Resources agreed to pay the expenses of Mr. Self's travel.

Mr. Self responded to Mineral Resource's instructions by filing an objection with Judge George. In his objection, Mr. Self referenced the provision of § 34A-2-602(1) of the Utah Workers' Compensation Act which limits medical examinations to places "reasonably convenient for the employee." Mr. Self explained that travel to Salt Lake was not "reasonably convenient" for him because such travel would jeopardize his unemployment insurance benefits, which he needed for day-to-day living expenses. Mr. Self also explained he might miss offers of employment, or calls to return to his former work, if he was away from his home. Finally, Mr. Self stated he had tried to arrange to undergo the requested medical examination in Oklahoma, but Mineral Resources had rejected this suggestion.

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Judge George ruled on Mr. Self's objection in a letter dated July 14, 2005. The letter neither referenced the "reasonably convenient" standard contained in §34A-2-602(1) of the Act, nor discussed the merits of Mr. Self's objection. Instead, Judge George summarily ordered Mr. Self to cooperate with Mineral Resources' medical evaluation in Salt Lake.

Mr. Self responded to Judge George's ruling by filing a request for Commission review on August 10, 2005. Judge George did not forward Mr. Self's motion for review to the Commission for its consideration. Instead, on August 11, 2005, Judge George dismissed Mr. Self's claim. In dismissing the claim, Judge George reasoned that Mr. Self's motion for review demonstrated that he did not intend to cooperate with the medical evaluation in Salt Lake. As an additional justification for dismissing Mr. Self's claim, Judge George held that Mr. Self had not submitted evidence that his work at Mineral Resources was the medical cause of his diseases.

On September 8, 2005, Mr. Self filed another motion for review, this time requesting the Appeals Board to review Judge George's order dismissing Mr. Self's claim.

DISCUSSION

The issue now before the Appeals Board arises from Mr. Self's request for an impartial determination of a relatively simple question—whether Mineral Resources' choice of Salt Lake as the site for Mr. Self's medical examination is "reasonably convenient." Pursuant to §34A-2-602(1) of the Utah Workers' Compensation Act, Mr. Self is entitled to the consideration of his arguments on this point, and to a reasoned decision. So far, he has received neither. The Appeals Board therefore sets aside Judge George's August 11, 2005, Order of Dismissal and remands this matter to the Commission's Adjudication Division for further proceedings.

Because Judge George is no longer with the Commission, the Adjudication Division must appoint a new administrative law judge ("ALJ") to preside over Mr. Self's claim. This new ALJ must first determine whether it is reasonably convenient for Mr. Self to undergo medical examination in Salt Lake, or whether the medical examination may take place in some other location. The Appeals Board expresses no opinion on the merits of that question, but only requires that the ALJ consider the parties' proposals and circumstances and then make a reasoned decision. This process requires very little formality, and the ALJ can advise the parties of his or her decision by letter. Then, after the issue of the location for medical examination is resolved, the ALJ shall proceed to determine whether Mr. Self is entitled to the benefits he claims for his alleged occupational diseases.

As a final matter, the Appeals Board notes that Judge George purported to dismiss Mr. Self's claim on the additional ground that Mr. Self had failed to provide evidence of a medical causal connection between his work at Mineral Resources and his occupational diseases. While it is true that Mr. Self is obligated to provide such evidence, he must also be given a fair opportunity to do so. If after receiving such opportunity he cannot provide the necessary evidence of medical causation, his claim may then be dismissed.

ORDER

The Appeals Board sets aside Judge George's order of August 11, 2005, and remands this matter to the Adjudication Division for further proceedings consistent with this decision. It is so ordered.

Dated this 14th day of December, 2006.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch